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Attorney for Plaintiff  
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	<b>Civ. No. CV03 00385 SOM-LEK</b>
	)	<b>(Copyright)</b>
Plaintiff,	)	
	)	<b>DECLARATION OF TIMOTHY J.</b>
vs.	)	<b>HOGAN IN SUPPORT OF</b>
	)	<b>MEMORANDUM IN OPPOSITION</b>
HAWAIIAN EXPRESS SERVICE,	)	<b>TO DEFENDANTS C&amp;S</b>
INC., a California corporation; et al.	)	<b>WHOLESALE GROCERS, INC.,</b>
	)	<b>C&amp;S ACQUISITION, LLC, C&amp;S</b>
	)	<b>LOGISTICS, LLC, ES3, LLC AND</b>
Defendants.	)	<b>RICHARD COHEN’S MOTION</b>
	)	<b>FOR SANCTIONS PURSUANT TO</b>
	)	<b>RULE 11; EXHIBITS 1 TO 4</b>
	)	
	)	
	)	
	)	

**DECLARATION OF TIMOTHY J. HOGAN IN SUPPORT OF  
PLAINTIFF WAYNE BERRY'S PLAINTIFF WAYNE BERRY'S  
MEMORANDUM IN OPPOSITION TO DEFENDANTS C&S  
WHOLESALE GROCERS, INC., C&S ACQUISITION, LLC, C&S  
LOGISTICS, LLC, ES3, LLC AND RICHARD COHEN'S MOTION FOR  
SANCTIONS PURSUANT TO RULE 11**

I, TIMOTHY J. HOGAN, am an attorney licensed to practice before all the courts of Hawaii and I make this declaration under penalty of perjury. All the statements herein are true and correct to the best of my knowledge, information and belief. If called upon to testify regarding the matters contained herein, I am competent and willing to do so.

1. Attached hereto as Exhibit "1" is a true and correct copy of the Declaration of Lex Smith (Docket No. 975).

2. Attached hereto as Exhibit "2" is a true and correct copy of the Declaration of Brian Christensen (Docket No. 974).

3. Attached hereto as Exhibit "3" is a true and correct copy of the Checklist for Financial and Conflicts of Interest that I found on-line at <http://www.uscourts.gov/guide/vol2/checklist.pdf>.

4. Attached hereto as Exhibit "4" is a true and correct excerpt copy of the Transcript of Proceeding Before the Honorable Susan Oki Mollway dated March 2, 2006, at page 98.

5. The motion was not filed to embarrass Mr. Smith. I had hoped that

Mr. Smith would have taken some action to correct his client's fraud but he did not. The Motion was filed because the undersigned believes that a reasonable person could question whether the Court can be impartial when making rulings that implicate whether Mr. Smith had reason to know of the false testimony and his failure to correct client fraud. I believe that any reasonable person would conclude that Mr. Smith would have known that Mr. Christensen was offering false testimony. I have an obligation to my client but also to this Court to raise such issues even if I, my family or my firm is attacked for doing so.

DATED: Honolulu, Hawaii, June 21, 2006.

/s/ Timothy J. Hogan  
TIMOTHY J. HOGAN